

October 27, 2016

Frank Boyle
VIA E-MAIL

RE: Joint Venture Inquiry

Dear Mr. Boyle:

ISSUE: This office is in receipt of your e-mail dated September 15, 2016, wherein you ask for guidelines for a joint venture. You ask whether a hotel and a detached restaurant can sell alcohol utilizing the same liquor license and, if so, what the maximum permissible distance is between the two buildings, and if both businesses must have the same owner. Finally, you ask whether your licensed business can apply for a joint venture and sell alcohol from an adjacent property that you own.

Records of the Pennsylvania Liquor Control Board ("PLCB") indicate that Charlestown Restaurant, Inc., holds Restaurant Liquor License No. R-19586 (LID 63002) for the premises located at 1021 Morehall Road, Devault, Pennsylvania.

OPINION: Preliminarily, because you are contemplating undertaking a significant endeavor, it is highly recommended that you seek guidance from private counsel experienced in Pennsylvania liquor law. You may also find information on the PLCB's website at www.lcb.pa.gov, under the "Legal" and "Licensing" menu tabs. This information includes, but is not limited to, the Liquor Code, the PLCB's Regulations, and a searchable Advisory Opinion database.

Regarding your joint venture inquiry, a joint venture is defined as "[a] business undertaking by two or more persons engaged in a single defined project. The necessary elements are: (1) an express or implied agreement; (2) a common purpose that the group intends to carry out; (3) shared profits and losses; and (4) each member's equal voice in controlling the project." (Black's Law Dictionary, Seventh Edition, 1999).

Otherwise, the Liquor Code prohibits the assignment of licenses, such as by leasing. 47 P.S. § 4-468(a)(1). The Liquor Code also prohibits anyone other than the licensee and a management company from having a pecuniary interest in the licensed business. 47 P.S. § 4-404. A "pecuniary interest" has been defined as substantial control of the licensed business, evidenced by participation in profits, assumption of liability, decision-making authority in purchasing, employment and other criteria of ownership. Appeal of E. J. Westside Inn Corp., 449 A.2d 93 (Pa. Cmwlth. 1982).

A licensee may, however, enter into management agreements which provide for sharing the control of the licensed business in certain areas, or joint venture agreements in which the license is transferred to and held by the joint venture, and which would allow the allocation of the profits of the licensed business between the members of the joint venture in whatever manner it wished.

As to your remaining inquiries, as you are presumably aware, a restaurant liquor license authorizes the licensee to sell alcoholic beverages only on the licensed areas of its premises. 47 P.S. § 4-406(a.1); 40 Pa. Code § 7.21(a). Hotel liquor licensees are authorized to sell liquor and malt or brewed beverages by the glass, open bottle or other container, and in any mixture, for consumption only in that part of a hotel habitually used for the serving of food to guests or patrons, and to guests in their private hotel rooms. 47 P.S. § 4-406(a)(1). Moreover, hotel liquor licenses (or holders of restaurant liquor licenses located in a hotel) may allow persons to transport liquor or malt or brewed beverages from the licensed portions of their premises to the unlicensed portions of their premises, so long as the liquor or malt or brewed beverages remain on hotel property. 47 P.S. § 4-406(e).

Both restaurant and hotel licensees may sell, for consumption off-premises, no more than 192 fluid ounces of malt or brewed beverages in a single sale to one person. 47 P.S. § 4-407. In addition, hotel and restaurant licensees that obtain a wine expanded permit can sell up to three liters of wine in a single transaction for consumption off premises.

Section 7.21(b)(2) of the PLCB's Regulations permits a licensee to extend its license to immediate, abutting, adjacent, and contiguous vacant land. 40 Pa. Code § 7.21(b)(2). The PLCB has discretion to approve an application for extension to an area that is not immediate, abutting, adjacent and contiguous; however, the two licensed premises may not be separated by a public thoroughfare. Roberts v. Pennsylvania Liquor Control Board, 604 A.2d 1152 (Pa. Cmwlth. 1992).

In addition, section 406.1 of the Liquor Code allows the Board to approve the extension of a restaurant liquor license to include a secondary service area with dimensions of at least 175 square feet, enclosed on three sides and with adequate seating. 47 P.S. § 4-406.1. However, the secondary service area must be located on property having a minimum area of one acre and it must be on land which is immediate, abutting, adjacent or contiguous to the licensed premises with no intervening public thoroughfare. *Id.* Additionally, the original licensed premises and the secondary service area must be located on the same tract of land. The Liquor Code defines “tract” as “a contiguous expanse of land under the control of one person.” 47 P.S. § 1-102.

Upon receipt of an application for an extension or a secondary service area, the determination of what constitutes a “public thoroughfare,” or “the same tract of land,” is made by the three-member Board, following an investigation by the PLCB’s Bureau of Licensing. Therefore, in response to your question concerning distance, there is no *per se* maximum distance that is permitted between two buildings on the same license.

Please do not hesitate to contact this office should you have additional questions.

THIS OPINION APPLIES ONLY TO THE FACTUAL SITUATION DESCRIBED HEREIN AND DOES NOT INSULATE THE LICENSEE OR OTHERS FROM CONSEQUENCES OF CONDUCT OCCURRING PRIOR TO ITS ISSUANCE. THE PROPRIETY OF THE PROPOSED CONDUCT HAS BEEN ADDRESSED ONLY UNDER THE LIQUOR CODE AND REGULATIONS. THE LAWS AND POLICIES ON WHICH THIS OPINION IS BASED ARE SUBJECT TO CHANGE BY THE LEGISLATURE OR THE PENNSYLVANIA LIQUOR CONTROL BOARD.

Sincerely,



RODRIGO J. DIAZ
CHIEF COUNSEL

Frank Boyle
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cc: Pennsylvania State Police, Bureau of Liquor Control Enforcement
Jerry W. Waters, Director, Office of Regulatory Affairs
Tisha Albert, Director, Bureau of Licensing
Jeffrey Lawrence, Assistant Director, Bureau of Licensing

LCB Advisory Opinion No. 16-433